

BEFORE THE ARIZONA CORPORATION COMMISSION

WILLIAM A. MUNDELL  
CHAIRMAN  
JIM IRVIN  
COMMISSIONER  
MARC SPITZER  
COMMISSIONER

Arizona Corporation Commission

DOCKETED

MAY 30 2002

DOCKETED BY



DOCKET NO. S-03448A-01-0000

IN THE MATTER OF

RONALD L. FANZO  
d/b/a INTERMARC MARKETING  
7127 East Becker Lane, Ste. 90  
Scottsdale, AZ 85254

RONALD L. FANZO  
d/b/a CASHFLOWS  
13020 North 96<sup>th</sup> Place  
Scottsdale, Arizona, 85260

RONALD L. FANZO  
13020 North 96<sup>th</sup> Place  
Scottsdale, Arizona, 85260

Respondents.

DECISION NO. 64850

OPINION AND ORDER

DATE OF HEARING: December 3, 2001

PLACE OF HEARING: Phoenix, Arizona

ADMINISTRATIVE LAW JUDGE: Philip J. Dion III

APPEARANCES: Ms. Kathleen Coughenour DeLaRosa, Staff Attorney,  
Securities Division, on behalf of the Arizona  
Corporation Commission;

**BY THE COMMISSION:**

Having considered the entire record herein and being fully advised in the premises, the  
Commission finds, concludes, and orders that:

FINDINGS OF FACT

On July 20, 2001, the Securities Division ("Division") of the Arizona Corporation  
Commission ("Commission") filed a Notice of Opportunity for Hearing Regarding the Temporary  
Order to Cease and Desist, for Restitution, for Administrative Penalties, and for Other Affirmative  
Actions ("Notice") against Ronald L. Fanzo, d/b/a Intermarc Marketing; Ronald L. Fanzo, d/b/a  
Cashflows, and Ronald L. Fanzo (collectively, "Respondents") in which the Division alleged that

1 Respondents have engaged in acts, practices and transactions that constitute violations of the Arizona  
2 Securities Act ("Act").

3       2       Respondents were duly served with copies of the Notice.

4       3       On August 21, 2001, Respondent Ronald L. Fanzo filed a document with the  
5 Commission that the Commission treated as a request for a hearing and pre-hearing conference for all  
6 Respondents.

7       4       On August 28, 2001, the Commission issued a Procedural Order that set the matter for  
8 a pre-hearing conference on September 4, 2001.

9       5       On September 4, 2001, the pre-hearing was held as scheduled. The Respondents  
10 appeared without the assistance of counsel. The Division appeared with counsel. At the pre-hearing  
11 conference in this matter, the parties were informed that the hearing in this case would take place on  
12 December 3, 2001.

13       6       On September 26, 2001, the Division met with Mr. Fanzo, and Mr. Fanzo sat for an  
14 Examination Under Oath ("EUO").

15       7       On December 3, 2001, a full public hearing was commenced before a duly authorized  
16 Administrative Law Judge at the Commission's offices in Phoenix, Arizona. The Respondents failed  
17 to appear for the hearing. The Division appeared and was represented by counsel. The Division  
18 indicated that they were prepared to proceed and, therefore, the hearing was held in absentia.  
19 Testimony was taken, and more than 10 exhibits were admitted into evidence during the course of the  
20 proceeding. Following the conclusion of the hearing, closing memoranda were submitted by the  
21 Division on January 3 and January 8, 2002. The matter was then taken under advisement pending  
22 submission of a Recommended Opinion and Order to the Commission.

23       8       Ronald L. Fanzo, whose last known home address is 13020 North 96th Place,  
24 Scottsdale, Arizona, 85260 was doing business in Arizona as an individual and under two other  
25 names. The first name is Cashflows, whose last known business address is the same as Mr. Fanzo's  
26 home address, and the second is Intermerc Marketing, whose last known business address is 7127 E.  
27 Becker Lane, Ste. 90, Scottsdale, Arizona 85254.

28       9       Mr. Fanzo was at all relevant times the sole proprietor of Intermerc and Cashflows.

10. From on or about November 2000, Mr. Fanzo, through Intermerc, operated Internet websites (the "Intermerc websites"). The Intermerc websites offered an opportunity to purchase a "complete turn-key package" of computer and software that purportedly would enable purchasers to set up an internet business immediately upon purchase of the system.

11. Purchasers of an Intermerc computer system would execute promissory notes agreeing to pay for the system.

12. Mr. Fanzo, through Cashflows, operated another Internet website (the "Cashflows website"). That website offered for sale promissory note investments and referred prospective purchasers to the e-mail address of Mr. Fanzo.

13. The promissory note investments offered by Mr. Fanzo, through Cashflows, included the promissory notes generated through sales of computer systems on the Intermerc website.

14. Respondents represented that the purchasers were "high risk" borrowers who could not obtain financing, other than through the Intermerc websites, for the purchase of the computers and software needed to set up an Internet business.

15. Respondents represented that purchasers of the promissory notes would realize a return of at least 30 percent on their investment. The Respondents represented that the promissory notes were fully secured by adequate collateral.

16. During the hearing, the Division called Scott Brown as a witness. Mr. Brown testified that he was a civil engineer who had some investment experience. He testified he invested mainly in stock and option investments through an on-line broker. Mr. Brown testified that while he was on the website of Papersource On-Line, his attention was drawn to information regarding small, short-term investments with 30 percent yields. Mr. Brown testified that he sent an e-mail requesting more information about the investment opportunity. Mr. Brown further testified that he received a response in the form of an e-mail that referred him to the Intermerc websites and gave contact information for a Ronald Fanzo.

17. Mr. Brown testified that he e-mailed Mr. Fanzo and asked for and received a sample agreement and balance sheet.

18. Mr. Brown stated that subsequently he entered into a signed agreement between

1 himself and Mr. Fanzo and invested \$1,000 with Intermerc and Mr. Fanzo.

2       19     Mr. Brown testified the business plan, as he understood it, was that Intermerc would  
3 sell computers, software and computer systems to customers who had a less than average credit  
4 rating. Mr. Brown understood that his profits were derived by the rate of return on the note that  
5 Intermerc was charging the customers, or if Intermerc sold the note, then the proceeds from the sale  
6 to the third party would flow to him at the agreed upon rate of return.

7       20     Mr. Brown testified that it was his understanding that his capital was being used to  
8 purchase computer equipment and for the marketing of the operation. He testified that he did not  
9 think any of the money would be used by Mr. Fanzo personally.

10       21     Mr. Brown testified that for his \$1,000, he expected to receive his principal plus a 30  
11 percent return over a six-month term as delineated in the agreement. The agreement, dated January  
12 20, 2001, stated that the return on the investment would yield a 30 percent APR. Therefore, Mr.  
13 Brown was to receive the \$1,159.71 on July 20, 2001, exactly 6 months after entering the agreement  
14 with Respondents.

15       22     Mr. Brown testified that while the rate of return was aggressive, it was associated with  
16 the fact that clients or customers of Intermerc had a below average credit rating. He went on to state  
17 that he knew that it would be a risky investment and that there would be a possibility of default. He  
18 further testified that when he e-mailed Mr. Fanzo about the possibility of people defaulting, Mr.  
19 Fanzo replied that they had not had any defaults and that there were only a few delinquencies.

20       23     Mr. Brown testified that in early July, 2001, he contacted Mr. Fanzo and indicated that  
21 he would be requesting his funds at the end of the contract and was not interested in participating any  
22 further.

23       24     On July 11, 2001, Mr. Fanzo replied to the e-mail stating that Mr. Brown's money had  
24 already been placed in the "queue for completing the program." Mr. Brown took this to mean that he  
25 should receive his funds within the first five days of August.

26       25     On August 15, 2001, Mr. Brown e-mailed Mr. Fanzo again requesting his money. On  
27 August 20, 2001, Mr. Fanzo replied that the check had already been sent to Mr. Brown, however,  
28 there was an error on the address line and that he would correct that error and send Mr. Brown his

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1 money immediately.

2       26. Mr. Brown indicated that he did not receive his check and again contacted Mr. Fanzo  
3 at the end of August, 2001, requesting his money. Mr. Brown received a reply on October 18, 2001  
4 from Mr. Fanzo indicating that Mr. Fanzo would not be able to refund his money because of an order  
5 from the Commission to cease and desist all activity.

6       27. Mr. Brown testified that he assumed that the securities were registered in compliance  
7 with all laws. Mr. Brown went on to testify that if he had known that Intermarc never had sold one  
8 computer system, that would have made a difference in his decision to invest. He further testified  
9 that had he known the balance sheet (which showed that Intermarc had \$44,150 in cash and accounts  
10 receivable of \$179,000) was fabricated, it would have made a difference in his investment decision.

11       28. Mr. Brown testified that it was his understanding that his \$1,000 investment was not  
12 solely limited to just one note. He testified that there would be at least three promissory notes that  
13 would be used as collateral indicating that his collateral would be secured by at least three separate  
14 individuals or companies in order to diversify the risk.

15       29. Mr. Brown also testified that in his security agreement, Intermarc guaranteed  
16 unconditionally that the obligations due under the security agreement would be paid in full and  
17 promptly and that any expenses paid or incurred by Mr. Brown to collect such obligations including  
18 reasonable attorney's fees and court costs would also be paid for by Respondents. Mr. Brown  
19 testified that he was given the impression that this business was a going concern, that Mr. Fanzo had  
20 already contacted individuals who wished to purchase the computer systems and all that Mr. Fanzo  
21 needed was investors to provide the funding.

22       30. Mr. Brown testified that he did not work for Respondents or in any way participate in  
23 the business making decisions of Intermarc or Cashflows. He further testified that he never made a  
24 decision as to what type of computer systems should be bought, nor did he decide who the company  
25 should contract with to either sell computer systems or purchase computer systems. He testified that  
26 he was simply a passive investor.

27       31. The Division called David Leifer, who is an investigator with the Securities Division,  
28 to testify at the hearing. Mr. Leifer indicated that the Securities Division had received a referral from

1 the Texas Securities Division regarding the Cashflows website. Mr. Leifer stated that they began to  
2 examine Cashflows and the other Respondents in December, 2000.

3       32     Mr. Leifer testified that he contacted Mr. Fanzo via e-mail in an undercover capacity.  
4 Mr. Leifer testified that Mr. Fanzo replied to his e-mail indicating that he was accepting investment  
5 amounts of \$1,000 up to \$20,000 in a "turn-key program" involving computer systems for business  
6 start-ups and that he was looking for investors. In the reply, Mr. Fanzo promised a rate of return of  
7 30 percent and stated that the use of funds would be divided between marketing and business  
8 purchases. Mr. Leifer went on to testify that the Cashflows website indicated that Cashflows  
9 purchases notes using pools of investor money and that those notes are checked for creditworthiness.  
10 The website goes on to say that "the notes are checked for credit worthiness, but more importantly,  
11 are purchased with full recourse . . . which means the seller of the note has an obligation to buy the  
12 note back or provide compensation in the event of a loss. In addition, your payments come directly  
13 from Cashflows and not from the note payor. This means you're never bothered by a late payment or  
14 check that bounces."

15       33     Mr. Leifer testified that he clicked on the e-mail link on the bottom of the Cashflows  
16 web page and that is how he contacted Mr. Fanzo. He further testified that Mr. Fanzo directed him to  
17 the website of Intermarc. Mr. Leifer testified that based upon his communications with Mr. Fanzo,  
18 Intermarc was the website which represented the business that generated the promissory notes that  
19 Cashflows sold.

20       34     Mr. Leifer testified that in doing a search of the Intermarc website, the administrative  
21 contact was listed as a Mr. Ron Fanzo with an address of 7127 E. Becker Lane, Ste. 90, Scottsdale,  
22 AZ 85254.

23       35     Mr. Leifer testified that the name Intermarc Marketing was registered as a trade name  
24 with the Secretary of State and the owner of such trademark was Mr. Ron Fanzo. Mr. Leifer testified  
25 that Mr. Ronald Fanzo was not registered with the Commission as a licensed securities salesman or  
26 dealer, which was evidenced by a Certificate of Non-Registration.

27       36     Mr. Leifer also testified that Intermarc had not filed with the Commission a Notice of  
28 Filing for Securities pursuant to Article 4 of the Securities Act, which was evidenced by a Certificate

1 of Non-Registration.

2 37 Mr. Leifer testified that in his investigation, he identified five investors.

3 38 Mr. Leifer went on to testify that three of the investors received partial returns of their  
4 investments. He further stated that since Intermarc never did business, it appears that the only source  
5 of that money would be subsequent investors.

6 39 Mr. Leifer testified that in his e-mail correspondence with Mr. Fanzo, Mr. Fanzo sent  
7 him a sample security agreement. The security agreement sent to Mr. Leifer is almost identical to the  
8 security agreement signed by the investors in this case.

9 40 Mr. Leifer testified that he was present at the EUO of Mr. Fanzo. The transcript of the  
10 EUO was admitted into evidence. In that examination, Mr. Fanzo admitted that he posted materials  
11 on the Internet soliciting participation in his investment pool, he had sold securities agreements to the  
12 investors in this case, and he acknowledged that the investors were completely passive. Additionally,  
13 Mr. Fanzo stated that he did not sell any computer systems with the monies he received from the  
14 investors

15 41 Mr. Leifer stated that when Mr. Fanzo was questioned about what he did with the  
16 money, Mr. Fanzo indicated he used some of it for advertisement expense, but that he also used some  
17 of the money as "living expenses" which he needed so that he could continue to perpetuate the  
18 business. Mr. Fanzo admitted that he never disclosed to the investors that he was going to use any of  
19 the money for his own living expenses.

20 42 At his EUO, Mr. Fanzo testified that no one else participated with him in Intermarc or  
21 Cashflows and that neither company had any employees. Mr. Fanzo went on to state that Cashflows  
22 really "isn't a business, it was just the name of this website." When questioned further, he admitted  
23 that all business was conducted through Intermarc and investments were done under the Intermarc  
24 name

25 43 When questioned about the information he provided to investors before they invested,  
26 Mr. Fanzo responded that he directed them to the main Intermarc website and gave them an outline of  
27 the company. He stated that he did not give them anything else other than the sample agreement. He  
28 further testified that he really didn't have a "business plan" for Intermarc.

1           44     Based upon Mr. Fanzo's testimony that he never sold a computer system, the balance  
2 sheet given to Mr. Brown indicating cash of \$44,155 and accounts receivable of \$179,000 appears to  
3 be fabricated.

4           45     At the EUO, Mr. Fanzo stated that he came to the conclusion that he was not required  
5 to be a registered agent or register the securities he offered because they were not attached to real  
6 estate. He stated that he had contacted a retired attorney who had confirmed his thinking but  
7 subsequently lost contact with that attorney.

8           46     After the hearing was concluded on January 8, 2002, the Securities Division filed a  
9 post-hearing exhibit indicating that five individuals invested \$15,950 with the Respondents of which  
10 \$3,200 was returned, leaving a balance of \$12,750 due for restitution.

11          47     The agreements entered into between Respondents and the investors are investment  
12 contracts, which are securities under the Act.

13          48     Based on the evidence, the investors in this case invested money in a common  
14 enterprise with an expectation of profits to be derived substantially from the efforts of others.

15          49     The invested money was placed in the sole control of Mr. Fanzo and Mr. Fanzo  
16 admitted that those funds were pooled under his management.

17          50     The investors had an expectation of profit based upon Mr. Fanzo operating a  
18 successful business. Their expectation of profits was delineated in their investment contract as a 30  
19 percent return on their investment.

20          51     The investors relied upon the efforts of Mr. Fanzo to obtain the promised rate of return  
21 and did not participate in any of the business decisions made by Respondents. Mr. Fanzo  
22 substantiated this fact at his EUO when he testified that the investors in this case were passive  
23 investors.

24          52     It is uncontested that the securities were never registered as required by the Act.

25          53     Mr. Fanzo solicited investments through the Intermarc and Cashflows websites. In his  
26 EUO, Mr. Fanzo confirmed that he had posted materials on the internet soliciting participation in his  
27 investment pool. Also, Mr. Fanzo, through Intermarc and Cashflows, directly collected more than  
28 \$15,000 from investors through payments made directly to Mr. Fanzo. Based on the evidence,



Respondents offered and sold securities that were not properly registered.

54 It is uncontested that the Respondents were not registered as securities dealer(s) or salesperson(s) as required by the Act.

55 Respondents, during the course of their business operation, misled investors by omitting material facts as follows:

- (a) that Respondents had never sold a computer system;
- (b) financial statements that accurately reflected the financial condition of Intermarc and/or Cashflows;
- (c) Mr. Fanzo's business experience and background to potential investors; and
- (d) that some of the investor funds were used to pay for Mr. Fanzo's personal living expenses.

56 Respondents, during the course of their business operation, made the following misrepresentations to investors as follows:

- (a) that Intermarc was a going concern with cash in excess of \$44,000 and accounts receivable or more than \$179,000;
- (b) that Mr. Fanzo had some contracts "slip into delinquency status", but had never had a default;
- (c) that Cashflows purchased notes whose value were always three times greater than the amount invested to acquire the notes; and
- (d) that investor funds were to be utilized only for two purposes - marketing and equipment purchases.

### CONCLUSIONS OF LAW

1 The Commission has jurisdiction over this matter pursuant to Article XV of the Arizona Constitution, A.R.S. §§ 44-1801 and 44-3101 et seq.

2 The investment contracts between the investors and Intermarc and/or Cashflows offered and sold by Mr. Fanzo were securities within the meaning of A.R.S. § 44-1801(23).

3 The securities were neither registered nor exempt from registration in violation of A.R.S. § 44-1841.

4 The actions and conduct of the Respondents Intermarc, Cashflows and Mr. Ronald Fanzo constitute the offer and/or sales of securities within the meaning of A.R.S. §§ 44-1801(13) and 44-1801(19).

5 Respondents Intermarc, Cashflows and Mr. Ronald Fanzo offered and/or sold unregistered securities from Arizona in violation of A.R.S. § 44-1841.

6 Respondents Intermerc, Cashflows and Mr. Ronald Fanzo are dealers or salesmen within the meaning of A.R.S. § 44-1801(9) and § 44-1801(20).

7 Respondents Intermerc, Cashflows and Mr. Ronald Fanzo offered and/or sold securities from Arizona without being registered as dealers or salesmen in violation of A.R.S. § 44-1842.

8 Respondents Intermerc, Cashflows and Mr. Ronald Fanzo violated the anti-fraud provisions of A.R.S. § 44-1991 in the manner set forth hereinabove.

9 Respondents Intermerc, Cashflows and Mr. Ronald Fanzo are found herein to have violated the Securities Act, should cease and desist pursuant to A.R.S. § 44-2032 from any future violations of A.R.S. §§ 44-1841, 44-1842 and 44-1991 and all other provisions of the Securities Act.

10 Respondents Intermerc, Cashflows and Mr. Ronald Fanzo should be jointly and severally liable to make restitution pursuant to A.R.S. § 44-2032 and A.A.C. R14-308 totaling \$12,750. subject to any legal set-offs.

11 With respect to the securities agreements that were offered, all of the above-named Respondents should be assessed an administrative penalty jointly and severally pursuant to A.R.S. § 44-2036 as follows: for the violation of A.R.S. § 44-1841, the sum of \$2,500; for the violation of A.R.S. § 44-1842, the sum of \$2,500; and for the violation of A.R.S. § 44-1991, the sum of \$10,000.

### ORDER

IT IS THEREFORE ORDERED that pursuant to the authority granted to the Commission under A.R.S. § 44-2032, Respondents Intermerc Marketing, Cashflows and Ronald L. Fanzo shall cease and desist from actions described hereinabove in violation of A.R.S. §§ 44-1841, 44-1842 and 44-1991

IT IS FURTHER ORDERED that pursuant to the authority granted to the Commission under A.R.S. § 44-2036, Respondents Intermerc Marketing, Cashflows and Ronald L. Fanzo shall jointly and severally pay as administrative penalties: for the violation of A.R.S. § 44-1841, the sum of \$2,500; for the violation of A.R.S. § 44-1842, the sum of \$2,500; and for the violation of A.R.S. § 44-1991, the sum of \$10,000.

IT IS FURTHER ORDERED that the administrative penalties ordered hereinabove shall be

1 made payable to the State Treasurer for deposit in the general fund for the State of Arizona.

2 IT IS FURTHER ORDERED that the administrative penalties ordered hereinabove shall be  
3 bear an interest rate of 10 percent per year for any outstanding balance after 60 days from the  
4 effective date of this Decision.

5 IT IS FURTHER ORDERED that pursuant to authority granted to the Commission under  
6 A.R.S. § 44-2032, Respondents Intermarc Marketing, Cashflows and Ronald L. Fanzo jointly and  
7 severally shall make restitution in an amount not to exceed \$12,750, subject to any legal set-offs  
8 confirmed by the Director of Securities, and said restitution is to be made within 60 days of the  
9 effective date of this Decision.

10 IT IS FURTHER ORDERED that the restitution ordered hereinabove shall bear an interest  
11 rate of 10 percent per year for the period from the dates of the investment to the date of payment of  
12 restitution by Respondents.

IT IS FURTHER ORDERED that all restitution payments ordered hereinabove shall be deposited into an interest bearing account(s) if appropriate, until distributions are made.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Secretary of the Arizona Corporation Commission, have hereunto, set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this 30<sup>TH</sup> day of MAY, 2002.

BRIAN C. McNEIL  
EXECUTIVE SECRETARY

DISSENT: \_\_\_\_\_

1 SERVICE LIST FOR:

RONALD L. FANZO

2 DOCKET NO.

S-03448A-01-0000

3  
4 RONALD L. FANZO  
5 d/b/a INTERMARC MARKETING  
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